



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,248	03/25/2004	Matthew N. Songer	82650	6681
22242	7590	10/17/2005		
FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406			EXAMINER DAVIS, DANIEL J	
			ART UNIT 3733	PAPER NUMBER

DATE MAILED: 10/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/809,248

Applicant(s)

SONGER, MATTHEW N.

Examiner

D. Jacob Davis

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-6 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites the limitation "screw members" in line 9. There is insufficient antecedent basis for this limitation in the claim. Examiner assumes that applicant means to modify the first and second anchors such that they are threaded.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-6, 8 and 9 are rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,156,616 to Meadows et al. in view of U.S. Publication 2001/0041916 to Bonutti and in further view of U.S. Publication 2003/0065361 to Dreyfuss. Meadows discloses a headless bone screw member and suture for attaching soft tissue to bone.

The Meadows suture is considered a "cable." If the suture is not considered a cable, Bonutti teaches the use of a cable in place of a suture, well known for its strength in the suturing art. Furthermore, Meadows fails to disclose multiple cables, multiple anchors, and a crimp. Bonutti teaches a system that is also used for attaching soft tissue to bone. As illustrated in Fig. 9, the system comprises two anchors, two cables, and a crimp. Using two anchors apparently attaches the tissue more securely to the bone and decreases the chance of anchor withdrawal. The crimp provides an easy way to secure the cables. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the Meadows device as taught by Bonutti, such that two or more anchors and two or more sutures are used to more securely attach soft tissue and prevent anchor withdrawal. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a crimp to quickly and easily attach the cables.

Meadows fails to disclose that the proximal interior end is rounded to minimize stress points on the suture. As best illustrated in figure 5, Dreyfuss teaches rounding the proximal interior end to reduce stress on the suture. It would have been obvious to one of ordinary skill in the art at the time the invention was made to round the proximal interior end of the Meadows device to reduce the likelihood of prematurely cutting or wearing the suture. Since the ligament is in tension, it will inherently pull the cable to the side, flexing the cable within the bore. Regarding claim 6, Meadows discloses a driver 51 in Fig. 5. Regarding the preamble, although Bonutti does not disclose that the system secures separated bone portions, the system as disclosed in Fig. 9, inherently stabilizes the bone.

Allowable Subject Matter

Claim 7 is allowed.

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed August 5, 2005 have been fully considered but they are not persuasive. Dreyfuss cures the deficiencies of the Meadows device by teaching that the proximal interior edges should be rounded to reduce stress on the suture. Using applicant's terminology, the device comprises "an axial bore...configured to minimize discrete stress points on the cables." Meadows discloses that the suture may be bent. Dreyfuss teaches that when the cable is bent, the bore is shaped in such a way that minimizes stress points on the suture.

Applicant's arguments regarding the Ferree and Bonutti under 35 U.S.C. 102 are persuasive and the rejections are withdrawn.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 3731


MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Jacob Davis whose telephone number is (571) 272-4693. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJD



EDUARDO C. ROBERT
PRIMARY EXAMINER